

### **IC 6-1.1-23**

#### **Chapter 23. Provisions for Collection of Delinquent Personal Property Taxes**

### **IC 6-1.1-23-1 Version a**

#### **Written demand; service; content**

*Note: This version of section effective until 1-1-2006. See also following version of this section, effective 1-1-2006.*

Sec. 1. (a) Annually, after November 10th but prior to August 1st of the succeeding year, each county treasurer shall serve a written demand upon each county resident who is delinquent in the payment of personal property taxes. The written demand may be served upon the taxpayer:

- (1) by registered or certified mail;
- (2) in person by the county treasurer or the county treasurer's agent; or
- (3) by proof of certificate of mailing.

(b) The written demand required by this section shall contain:

- (1) a statement that the taxpayer is delinquent in the payment of personal property taxes;
- (2) the amount of the delinquent taxes;
- (3) the penalties due on the delinquent taxes;
- (4) the collection expenses which the taxpayer owes; and
- (5) a statement that if the sum of the delinquent taxes, penalties, and collection expenses are not paid within thirty (30) days from the date the demand is made then:

(A) sufficient personal property of the taxpayer shall be sold to satisfy the total amount due plus the additional collection expenses incurred; or

(B) a judgment may be entered against the taxpayer in the circuit court of the county.

*(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by Acts 1977, P.L.71, SEC.1; P.L.38-1998, SEC.3; P.L.173-2003, SEC.9.*

### **IC 6-1.1-23-1 Version b**

#### **Written demand; service; content**

*Note: This version of section effective 1-1-2006. See also preceding version of this section, effective until 1-1-2006.*

Sec. 1. (a) Annually, after November 10th but before August 1st of the succeeding year, each county treasurer shall serve a written demand upon each county resident who is delinquent in the payment of personal property taxes. Annually, after May 10 but before October 31 of the same year, each county treasurer may serve a written demand upon a county resident who is delinquent in the payment of personal property taxes. The written demand may be served upon the taxpayer:

- (1) by registered or certified mail;
- (2) in person by the county treasurer or the county treasurer's agent; or
- (3) by proof of certificate of mailing.

- (b) The written demand required by this section shall contain:
- (1) a statement that the taxpayer is delinquent in the payment of personal property taxes;
  - (2) the amount of the delinquent taxes;
  - (3) the penalties due on the delinquent taxes;
  - (4) the collection expenses which the taxpayer owes; and
  - (5) a statement that if the sum of the delinquent taxes, penalties, and collection expenses are not paid within thirty (30) days from the date the demand is made then:
    - (A) sufficient personal property of the taxpayer shall be sold to satisfy the total amount due plus the additional collection expenses incurred; or
    - (B) a judgment may be entered against the taxpayer in the circuit court of the county.

(c) Subsections (d) through (g) apply only to personal property that:

- (1) is subject to a lien of a creditor imposed under an agreement entered into between the debtor and the creditor after June 30, 2005;
- (2) comes into the possession of the creditor or the creditor's agent after May 10, 2006, to satisfy all or part of the debt arising from the agreement described in subdivision (1); and
- (3) has an assessed value of at least three thousand two hundred dollars (\$3,200).

(d) For the purpose of satisfying a creditor's lien on personal property, the creditor of a taxpayer that comes into possession of personal property on which the taxpayer is adjudicated delinquent in the payment of personal property taxes must pay in full to the county treasurer the amount of the delinquent personal property taxes determined under STEP SEVEN of the following formula from the proceeds of any transfer of the personal property made by the creditor or the creditor's agent before applying the proceeds to the creditor's lien on the personal property:

STEP ONE: Determine the amount realized from any transfer of the personal property made by the creditor or the creditor's agent after the payment of the direct costs of the transfer.

STEP TWO: Determine the amount of the delinquent taxes, including penalties and interest accrued on the delinquent taxes as identified on the form described in subsection (f) by the county treasurer.

STEP THREE: Determine the amount of the total of the unpaid debt that is a lien on the transferred property that was perfected before the assessment date on which the delinquent taxes became a lien on the transferred property.

STEP FOUR: Determine the sum of the STEP TWO amount and the STEP THREE amount.

STEP FIVE: Determine the result of dividing the STEP TWO amount by the STEP FOUR amount.

STEP SIX: Multiply the STEP ONE amount by the STEP FIVE amount.

STEP SEVEN: Determine the lesser of the following:

(A) The STEP TWO amount.

(B) The STEP SIX amount.

(e) This subsection applies to transfers made by a creditor after May 10, 2006. As soon as practicable after a creditor comes into possession of the personal property described in subsection (c), the creditor shall request the form described in subsection (f) from the county treasurer. Before a creditor transfers personal property described in subsection (d) on which delinquent personal property taxes are owed, the creditor must obtain from the county treasurer a delinquent personal property tax form and file the delinquent personal property tax form with the county treasurer. The creditor shall provide the county treasurer with:

(1) the name and address of the debtor; and

(2) a specific description of the personal property described in subsection (d);

when requesting a delinquent personal property tax form.

(f) The delinquent personal property tax form must be in a form prescribed by the state board of accounts under IC 5-11 and must require the following information:

(1) The name and address of the debtor as identified by the creditor.

(2) A description of the personal property identified by the creditor and now in the creditor's possession.

(3) The assessed value of the personal property identified by the creditor and now in the creditor's possession, as determined under subsection (g).

(4) The amount of delinquent personal property taxes owed on the personal property identified by the creditor and now in the creditor's possession, as determined under subsection (g).

(5) A statement notifying the creditor that IC 6-1.1-23-1 requires that a creditor, upon the liquidation of personal property for the satisfaction of the creditor's lien, must pay in full the amount of delinquent personal property taxes owed as determined under subsection (d) on the personal property in the amount identified on this form from the proceeds of the liquidation before the proceeds of the liquidation may be applied to the creditor's lien on the personal property.

(g) The county treasurer shall provide the delinquent personal property tax form described in subsection (f) to the creditor not later than fourteen (14) days after the date the creditor requests the delinquent personal property tax form. The county and township assessors shall assist the county treasurer in determining the appropriate assessed value of the personal property and the amount of delinquent personal property taxes owed on the personal property. Assistance provided by the county and township assessors must include providing the county treasurer with relevant personal property forms filed with the assessors and providing the county treasurer with any other assistance necessary to accomplish the purposes of this section.

*(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by Acts 1977, P.L.71, SEC.1; P.L.38-1998, SEC.3; P.L.173-2003, SEC.9; P.L.214-2005, SEC.14.*

#### **IC 6-1.1-23-1.2**

##### **Documents to be signed; official documents**

Sec. 1.2. (a) The following documents must be signed by the county treasurer or a designee of the county treasurer:

- (1) A notice or demand issued under this chapter.
- (2) Any other document issued under this chapter that requires an authorizing signature.

(b) A document signed under this section is an official document of the county treasurer.

*As added by P.L.46-1991, SEC.3.*

#### **IC 6-1.1-23-1.5**

##### **Contracts; collection fees**

Sec. 1.5. (a) A county treasurer may enter into a contract, subject to the approval of the county executive, for services that the county treasurer considers necessary for:

- (1) the administration of this chapter; or
- (2) the collection of delinquent personal property taxes.

(b) If delinquent personal property taxes are collected under a contract entered into under this section, the county treasurer may collect from the person owing the delinquent taxes a reasonable collection fee.

*As added by P.L.46-1991, SEC.4. Amended by P.L.56-1996, SEC.2.*

#### **IC 6-1.1-23-2**

##### **Levy and sale of property for delinquent taxes**

Sec. 2. (a) If a taxpayer does not pay the total amount due within thirty (30) days after the date a written demand is made under section 1 of this chapter, the county treasurer shall levy upon and sell personal property of the taxpayer which is of sufficient value to pay the delinquent taxes, penalties, and anticipated collection expenses.

(b) The county treasurer shall levy upon personal property by calling upon the delinquent taxpayer at his residence or place of business and making a list in duplicate of all of his personal property. The county treasurer shall retain one (1) copy of the list and deliver the other copy to the delinquent taxpayer. The county treasurer may require the delinquent taxpayer to give a list under oath of all the personal property owned by him, and the names of the owners of other personal property which is in the delinquent taxpayer's possession. If the delinquent taxpayer fails to provide the list, the county treasurer shall file a petition which states that fact in the circuit court of the county, and the circuit court shall order the delinquent taxpayer to provide the list.

(c) The county treasurer shall appraise the personal property included in a levy. The personal property included in a levy is subject to sale for the payment of the delinquent taxes, penalties, and

collection expenses without further notice to the delinquent taxpayer.  
(Formerly: Acts 1975, P.L.47, SEC.1.)

### **IC 6-1.1-23-3**

#### **Levy procedure; taxpayer's bond**

Sec. 3. (a) When a county treasurer levies upon personal property, he may:

(1) take immediate possession of the property and store it in a secure place; or

(2) leave the property in the custody of the delinquent taxpayer until the day of the sale.

(b) If the personal property is left in the custody of the delinquent taxpayer, he shall give the county treasurer a joint and several delivery bond, with a surety acceptable to the county treasurer. The bond must be payable to this state in an amount at least equal to the sum of the delinquent taxes, penalties, and anticipated collection expenses. The state may not initiate an action on the bond if:

(1) the personal property is delivered for sale at the time and place designated by the county treasurer; or

(2) the obligor, before the time of the sale, pays to the county treasurer the amount of the delinquent taxes, penalties, and collection expenses.

(c) The bond required by subsection (b) of this section shall be prepared in the following form:

We, A, as principal, and B, as surety, are jointly and severally bound unto the state of Indiana in the penal sum of \_\_\_\_\_  
(\_\_\_\_) on the following condition:

Whereas, C, as treasurer of \_\_\_\_\_ County, has this day levied upon the following personal property, (here list such property), of the value of \_\_\_\_\_ (\_\_\_\_) to satisfy the delinquent taxes, penalties, and anticipated collection expenses for the year(s) \_\_\_\_\_ due from said A. Now if A shall deliver the said personal property to C at \_\_\_\_\_ o'clock (A.M. or P.M.) of the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_, at the place designated by C to be sold to pay the delinquent taxes, penalties, and anticipated collection expenses, then this bond shall be void, else in full force.

Witness our hands and

seals \_\_\_\_\_ (date) \_\_\_\_\_

\_\_\_\_\_ A \_\_\_\_\_

\_\_\_\_\_ B \_\_\_\_\_

Approved by me \_\_\_\_\_ (date) \_\_\_\_\_

\_\_\_\_\_ C \_\_\_\_\_

Treasurer of \_\_\_\_\_ County

(Formerly: Acts 1975, P.L.47, SEC.1.)

### **IC 6-1.1-23-4**

#### **Notice of sale**

Sec. 4. After a county treasurer levies upon a delinquent taxpayer's personal property, he shall give notice of the time and place of sale. The notice shall contain a list of the property to be

sold. The county treasurer shall give this notice at least ten (10) days before the date of sale. The notice shall be given by publication one (1) time in the manner prescribed in IC 1971, 6-1.1-22-4(b) and by posting one (1) notice at a public place of posting in the county courthouse.

*(Formerly: Acts 1975, P.L.47, SEC.1.)*

#### **IC 6-1.1-23-5**

##### **Auction of property; record; proceeds of sale**

Sec. 5. (a) If the delinquent taxes, penalties, and collection expenses are not paid before the time set for the sale, the county treasurer shall sell sufficient personal property of the taxpayer to pay the delinquent taxes, penalties, and collection expenses. The county treasurer shall, at the time and place designated in the notice, sell the personal property at public auction to the highest bidder. The county treasurer shall keep a record of all sales in the form prescribed by the state board of accounts. The proceeds of the sale shall be paid into the county treasury and applied as follows:

- (1) first, to the collection expenses;
- (2) second, to the payment of the delinquent taxes and penalties;
- (3) third, to the payment of other tax delinquencies of the taxpayer in the order provided in subsection (b) of this section; and
- (4) fourth, any balance remaining shall be paid to the delinquent taxpayer.

(b) Any surplus funds to be applied to the other delinquent taxes of a taxpayer under subsection (a)(3) of this section or under IC 1971, 6-1.1-24-7(a)(2) shall be applied as follows:

- (1) first, to the payment of delinquent personal property taxes owed in the county by the taxpayer;
- (2) second, to the payment of delinquent real property taxes owed in the county by the taxpayer; and
- (3) third, to the payment of delinquent personal property taxes owed by the taxpayer and certified from another county.

*(Formerly: Acts 1975, P.L.47, SEC.1.)*

#### **IC 6-1.1-23-6**

##### **Scope of levy and sale provisions; exemption of household goods**

Sec. 6. (a) The scope of the levy and sale provisions of this chapter is not limited to a taxpayer's personal property which is subject to assessment and taxation under this article. Thus, except as provided in subsection (b) of this section, all of a taxpayer's personal property is subject to levy and sale under this chapter.

(b) The household goods of any person, not to exceed the value of six hundred dollars (\$600), are exempt from levy and sale. The county treasurer shall determine the value of a person's household goods. If the taxpayer disputes the value, the county assessor shall view the property and fix the true cash value of it. The value so fixed is binding upon the county treasurer and the owner of the property.

*(Formerly: Acts 1975, P.L.47, SEC.1.)*

#### **IC 6-1.1-23-7**

##### **Collection expenses; payment; fees; disposition**

Sec. 7. (a) With respect to the collection of delinquent personal property taxes, the county treasurer shall charge the following collection expenses to each delinquent taxpayer:

- (1) For making a demand by:
    - (A) registered or certified mail, eight dollars (\$8); or
    - (B) any other manner permitted by section 1 of this chapter, five dollars (\$5).
  - (2) For making a levy, ten dollars (\$10).
  - (3) For selling personal property, ten percent (10%) of the sale price.
  - (4) For advertising a sale, the legal rates for advertising.
  - (5) For transfer and storage of personal property, the actual expense incurred.
  - (6) Other reasonable expenses of collection, including:
    - (A) title search expenses;
    - (B) uniform commercial code search expenses; and
    - (C) reasonable attorney's fees or court costs incurred:
      - (i) in the collection process;
      - (ii) due to a court order; or
      - (iii) due to an order of the treasurer;
- under IC 6-1.1-23-10.

(b) The fees collected under this section are the property of the county and shall be deposited in the county general fund. The collection expenses incurred in connection with the levy upon and sale of personal property shall be paid from the county general fund without prior appropriation.

*(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by Acts 1977, P.L.72, SEC.1; Acts 1979, P.L.62, SEC.1; P.L.46-1991, SEC.5; P.L.68-1993, SEC.3; P.L.38-1998, SEC.4.*

#### **IC 6-1.1-23-8**

##### **Delinquent taxpayer about to remove property from county; levy and sale procedure**

Sec. 8. When a county treasurer believes that a person who is liable for delinquent personal property taxes is about to take his property from the county without paying the taxes, the treasurer may, in the manner prescribed in this chapter, levy upon and sell sufficient personal property of that person to pay the delinquent taxes, penalties, and collection expenses. The county treasurer is not required to make the demand required by section 1 of this chapter before a levy and sale made under this section.

*(Formerly: Acts 1975, P.L.47, SEC.1.)*

#### **IC 6-1.1-23-9**

##### **Record of delinquencies**

Sec. 9. (a) In the year immediately following the year in which personal property taxes become delinquent, each county treasurer shall prepare a record of the delinquencies for which written demand

has been made under section 1 of this chapter and which remain unpaid for at least sixty (60) days after the demand is made.

(b) The county treasurer shall prepare the record required by this section in a form prescribed or approved by the state board of accounts. For each delinquent taxpayer, the record shall contain:

(1) the name of the taxpayer who is personally liable for the taxes as shown by the tax duplicate;

(2) the last known address of the taxpayer;

(3) the date when the last installment of taxes included in the record became delinquent; and

(4) the amount of all delinquent taxes, penalties, and collection expenses for which such a demand has been made and which remain unpaid.

(c) The county treasurer shall swear to the accuracy of the record before the clerk of the circuit court and shall file the record with the clerk. When the record is so filed, the amount of delinquent taxes, penalties, and collection expenses stated in the record constitute a debt of the named taxpayer. This debt in all respects has the same force and effect as a judgment. The judgment so entered shall be in favor of the county for the benefit of all taxing units having an interest in it. Beginning the day the record is filed, the delinquent taxpayer shall, instead of the penalties prescribed in IC 1971, 6-1.1-37-10, pay interest on the amount of the judgment at the same rate imposed on other judgments.

(d) On the date the county treasurer files the record in the office of the clerk of the circuit court, the county treasurer shall make an entry on the tax duplicate in a column headed "Certified to Clerk of Circuit Court."

*(Formerly: Acts 1975, P.L.47, SEC.1.)*

### **IC 6-1.1-23-10**

#### **Notice of judgment and execution; restraining orders; remedies; attorney's fees**

Sec. 10. (a) If a judgment entered under section 9 of this chapter is not paid, the county treasurer may notify the delinquent taxpayer by certified mail that a judgment has been entered against him and that the treasurer is going to file a praecipe for execution. If the judgment is not paid within ten (10) days after the date the notice is given, the county treasurer shall file the praecipe for execution. If this notice is not given, an execution upon the judgment is invalid.

(b) If a judgment has been entered against a taxpayer under section 9 of this chapter, the county treasurer may obtain a court order restraining the taxpayer from transacting business in the county. However, the restraining order may be dissolved if the court believes that dissolution of the restraining order will make collection of the judgment more likely.

(c) If a judgment against a taxpayer under section 9 of this chapter has not been satisfied within sixty (60) days after the judgment is entered, the county treasurer may do the following without judicial proceedings:



(1) Levy upon property of the taxpayer that is held by a financial institution. The county treasurer shall make a levy in the same manner as the department of state revenue under IC 6-8.1-8-8. A financial institution that receives a claim under this subdivision shall transfer to the county treasurer property of the taxpayer that is held by the financial institution. However, if the value of the taxpayer's property held by the financial institution is greater than the amount of the judgment, the financial institution shall transfer property of the taxpayer in an amount equal to the amount of the judgment.

(2) Garnish the accrued earnings and wages of the taxpayer by giving notice to the taxpayer's employer. An employer who receives a notice under this subdivision shall garnish the accrued earnings and wages of the taxpayer in an amount equal to the full amount subject to garnishment under IC 24-4.5-5-105. The employer:

(A) shall remit the amount garnished under this subdivision to the county treasurer; and

(B) is entitled to a fee equal to the amount of the fee that may be collected under IC 24-4.5-5-105(5) in a garnishment action. However, the taxpayer shall pay the entire fee collected under this clause.

(3) Withhold the amount of the judgment in full or in part from any payment that:

(A) is due to the taxpayer from the county; and

(B) requires the signature of the county treasurer.

(d) The treasurer of a county may use any combination of remedies provided under this section to collect the following:

(1) Delinquent taxes.

(2) Expenses incurred under IC 6-1.1-23-7(a)(1) through IC 6-1.1-23-7(a)(6).

(e) A county treasurer that incurs attorney's fee expenses for legal services not related to formal judicial proceedings shall petition a circuit or superior court in the county for approval to pay the expenses. The court may conduct a hearing on the petition and may authorize the auditor of the county to issue a warrant for the amount of the reasonable expenses. The county treasurer shall pay the warrant without an appropriation for the disbursement.

*(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.46-1991, SEC.6; P.L.44-1992, SEC.1; P.L.68-1993, SEC.4.*

#### **IC 6-1.1-23-11**

##### **Certificate of judgment to treasurers of other counties; indexing; execution; audits**

Sec. 11. (a) The treasurer of a county in which a judgment is entered under section 9 of this chapter shall send a certificate of the judgment to the treasurer of another county and to the department of local government finance if the county treasurer determines that:

(1) the delinquent taxpayer does not have, in the county in which the judgment is entered, property of sufficient value to

satisfy the judgment; and

(2) the delinquent taxpayer does have property in the other county.

(b) A county treasurer who receives a certificate of judgment shall have the judgment indexed in the judgment docket by the clerk of the circuit court of the county the treasurer serves. The county treasurer shall proceed to have execution issued upon the judgment in the same manner as if the judgment had been originally entered in the county he serves.

(c) The department of local government finance shall make periodic audits of the records of the county treasurers to insure compliance with the provisions of this section.

*(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.90-2002, SEC.212.*

### **IC 6-1.1-23-12**

#### **Setting aside judgment; grounds**

Sec. 12. (a) A judgment entered under section 9 or section 11 of this chapter may be set aside only for one (1) of the following reasons:

(1) The person against whom the judgment was entered was not liable for the delinquent taxes, penalties, and collection expenses for which the judgment was entered.

(2) The delinquent taxes, penalties, and collection expenses have been paid either in whole or in part.

(3) The required written demand was not given in the manner prescribed in section 1 of this chapter.

(4) The person against whom the judgment was entered is deceased, as evidenced by a certificate of death.

(5) The corporation against whom the judgment was entered has been formally dissolved or is no longer in business.

(6) The judgment is uncollectible as a result of bankruptcy.

(7) The county treasurer has exhausted all reasonable efforts to collect the delinquent taxes, penalties, and collection expenses for the period specified in IC 6-8.1-8-2(f) without success.

For purposes of subdivision (2), if only part of the items have been paid, the judgment may be set aside only in the amount of the payment.

(b) A judgment may be set aside under this section only under a finding entered of record by a court which has jurisdiction.

*(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.56-1996, SEC.3.*

### **IC 6-1.1-23-13**

#### **Satisfaction of judgments**

Sec. 13. Payment of delinquent tax judgments and interest shall be made to the county treasurer. On a daily basis the county treasurer shall enter a satisfaction of all judgments paid in the delinquent tax judgment record maintained in the office of the clerk of the circuit court. The county treasurer shall apply the amount so paid to the

delinquent taxes, penalties, and collection expenses for which the judgment was entered.

*(Formerly: Acts 1975, P.L.47, SEC.1.)*